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May 13, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, D.C. 20554

**Re: Amendment of Parts 1, 21, 73 74 and 101 of the Commission's Rules to
Facilitate the Provision of Fixed and Mobile Broadband Access,
Educational and other Advanced Services in the 2150-2162 MHz
Bands (WT Docket No. 03-66) (NPRM)
NOTICE OF ORAL EX PARTE PRESENTATION**

Dear Ms. Dortch:

On May 12, 2004, Robert J. Rini, counsel to Network For Instructional TV, Inc. ("NITV"); LTG Julius W. Becton, Jr., USA (Ret), Vice Chairman of NITV; and Steven J. Gorski, Senior Vice President of NITV, met with John Muleta, Chief of the Wireless Telecommunications Bureau, Catherine W. Seidel, Deputy Chief of the Bureau and Legal Advisor Uzoma C. Onyeije.

We discussed the issues set forth on the attachment in support of opening eligibility to allow commercial interests to hold ITFS licenses.

NITV supports a **compromise position** between those that would allow the sale of ITFS licenses to commercial interests and those opposed. Specifically, NITV believes ITFS licensees should be free to assign ITFS licenses to commercial interests if a demonstration is made in the assignment application that the sale furthers the educational mission of the assignor and if a set-aside of 5% of the capacity of the ITFS station that is sold is reserved for free use by educators on a first-come first-served basis following publication of a notice in a local newspaper indicating the capacity is available. NITV indicated its opposition to those who would restrict eligibility to the mid-band only as leaving ITFS interests out in the cold in Spectrum Siberia, holding only the least desirable spectrum.

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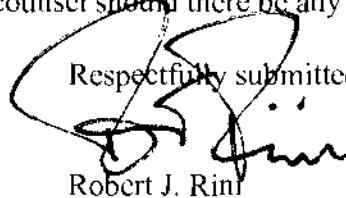
We discussed whether the 5% was on available "capacity" over the ITFS station or based solely on a percentage of the "spectrum." NITV concluded that its plan was tied to "capacity" made available on any system built by the assignee utilizing the ITFS channels that have been assigned, but not other channels in the system.

We also discussed making certain that the assignee remains responsible for ensuring qualified educators actually utilize the 5% set-aside through the filing of an annual report demonstrating how the capacity has been utilized and what educator(s) are using the capacity. The assignee would be free to discontinue access if the qualified educator failed to use the capacity to meet its educational mission.

NITV also supported the application of stream-lined processing rules in the mid-band, which would, for example, allow ITFS licensees to modify their facilities without prior FCC consent if such modification met FCC non-interference criteria.

Please contact the undersigned counsel should there be any questions.

Respectfully submitted,



Robert J. Rini

cc: John Muleta
Catherine W. Scidel
Uzoma C. Onyeije



May 12, 2004

**NITV SUPPORTS THE VOLUNTARY SALE OF ITFS LICENSES
TO COMMERCIAL INTERESTS IF EDUCATIONAL INTERESTS
ARE SAFEGUARDED WITH A SET-ASIDE**

NITV and its Mission

- NITV is a non-profit education corporation established in 1979.
- Together with local school affiliates, which include 57 local K-12 school districts, two community colleges and three universities, NITV distributes educational programming and services over 23 ITFS stations and the Internet to over a million students and teachers.

Open Eligibility Will Promote Greater Utilization of ITFS Spectrum

- Allow educators continued full use of spectrum or lease options, as now set forth in the Rules.
- Provide educators the option, at their discretion, to sell ITFS spectrum to commercial interests, if they can show they will use the acquired funds or other consideration to fulfill their educational mission.
- Set-aside for education, five percent (5%) of any spectrum sold to the commercial sector for the continued use of the original educator or any non-profit educational Institution or Organization.

Education Would Benefit From Open Eligibility

- Promotes the infusion of investment capital into ITFS by **providing certainty in spectrum rights and reducing transaction costs** that would accelerate the development and implementation of technology to better serve education. With very few exceptions, educators cannot develop technology or deploy wireless broadband systems, without commercial support.
- The FCC has acknowledged that there is "no contradiction" between an ITFS licensee performing its **educational mission** and obtaining the maximum return from its licensed spectrum to further that mission.
- While not without risks or controversy, **open eligibility will not result in a de facto reallocation** of ITFS to commercial service because ITFS remains a valuable educational service to some and with an educational set-aside, many more educators will benefit as wireless broadband systems are constructed.
- Without strong, viable and successful commercial operators working with ITFS licensees to serve homes and businesses that will enjoy increased access to broadband services, **helping to stimulate the economy, further innovation and introduce new competition**, ITFS will remain a target for other services seeking spectrum.